

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the matter of the Involuntary
Discharge/Transfer of J.S., Petitioner, by
Redeemer Health and Rehab Center,
Respondent

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter was heard on June 19, 2012, before Administrative Law Judge Thomas W. Wexler at the Redeemer Health and Rehab Center, 625 West 31st Street, Minneapolis, MN. 55408. The hearing record closed at the conclusion of the hearing, the same day.

April Boxeth appeared on behalf of Redeemer Health and Rehab Center (Redeemer). J.S. appeared pro se.

The following witnesses testified: Dan Colgan, Administrator; Jeanette Delich, Business Administrator; Rachel Gilmore, Licensed Social Worker; and J.S., Petitioner.

STATEMENT OF THE ISSUES

1. Does Redeemer have proper reasons to discharge and transfer J.S.
2. Did Redeemer's notice of discharge identify a location of discharge to ensure the safe and orderly transfer of J.S.
3. If the answer to #2 is "no," is there an equitable basis to nonetheless approve the discharge?

Based on the evidence produced and the arguments of the parties, the Administrative Law Judge makes the following findings, conclusions and recommendation.

FINDINGS OF FACT

1. J.S. is 71 years of age. Her date of birth is November 18, 1940. She is reasonably able-bodied, but frequently uses a walker to ambulate. She is mentally alert and oriented and was able to express herself well and to argue the points she wanted to present at the hearing. Her primary medical diagnoses are chronic obstructive

pulmonary disease, congestive heart failure, and arthritis. She owns and drives her own vehicle.¹

2. J.S. reasonably requires some home health care. On June 15, 2012, her attending physician described her condition and needs as follows:

...it is my medical opinion that (J.S.) can be safely discharged from Elim Redeemer to a residential setting ("Home"), such as but not limited to, a private home, housing with services or apartment with home care services. (J.S.) is generally healthy and is able to walk with the assistance of a walker. Her primary needs are bathing, medication reminder and ordering oxygen which could be addressed by home care services. For these reasons, (J.S.'s) discharge to Home with home care services is medically appropriate."²

3. J.S. became a resident at Redeemer on August 29, 2011. At that time she signed an Admission Agreement. The Agreement required J.S. to sign over to Redeemer any income not to exceed the spend-down obligation as may be required to pay any portion of Redeemer's charges not otherwise satisfied by private or public sources. J.S. has refused to sign over her social security payments, as more completely described below.³

4. Initially, upon admittance to Redeemer, J.S. obligations to Redeemer were paid by private insurance with Medica. This coverage ceased in September when she no longer was receiving physical therapy. Then J.S. applied for Medical Assistance (MA). The initial application was apparently misplaced by MA, so no payments were forthcoming. Redeemer carried the account, expecting J.S. to be eventually approved. After further communications with MA, J.S. was approved in early April 2012 retroactive to September 2011. However, there was still a monthly pay down due from J.S. in the initial sum of \$736.00 per month, and then \$763.00 per month commencing January 1, 2012. Redeemer was getting paid the \$736.00 and now the \$763.00 from Medica, which happens to be an MA administrator, but Redeemer is obligated to pay that money back to MA. To date those funds have not been repaid.⁴

5. J.S. has continually refused to pay the balance and has refused to assign her social security benefits to Redeemer to apply to the balance. J.S. receives Social Security benefits of approximately \$765.00 per month (after deduction of Medicare premiums). J.S. wants to keep her Social Security funds to pay for her automobile expenses and other personal expenses.⁵

6. J.S. states that she did not receive notice of the monthly arrearages that had accrued until early April 2012. That appears to be true, because the MA approval

¹ Testimony of J.S.

² Ex 9.

³ Ex 1.

⁴ Test. of Jeanette Delich and Ex. 4.

⁵ Test of J.S., J. Delich and Exs. 6 and 8 (note of 5/8/12).

occurred at about that time. Nonetheless, J.S. was familiar with the pay-down requirements and has continued to refuse to assign her Social Security benefits or to make payment even for the ongoing charges. J.S. has made it abundantly clear that she will not assign her social security benefits to the facility because she wants those funds for her personal use. Her desire to have the degree of independence those funds would provide is understandable, but does not satisfy the requirements of the law or her contractual obligation.⁶ J.S. refused to consider a payment plan.

7. On April 27, 2012 Redeemer personally delivered to J.S. a notice of discharge. The notice stated the balance due, intent to discharge more than a month later, it stated a location to which the transfer or discharge was to be made, it stated the right to appeal and the address of appeal facilities, and the name, address and phone of the state long term care ombudsman.⁷

8. The notice identified the home of J.S.'s friend, M.B., as the location to which J.S. would be transferred. M.B. was the only contact person J.S. identified in her papers on file in the Redeemer facility. However, it appears by a preponderance of the evidence that transfer there would not be possible because M.B. lives in a one bedroom apartment, is approximately 80 years old, is on section 8 housing, and is not willing to accept J.S. into her home as a long term resident, even though J.S. has resided there for a short period on one or more prior occasions. Redeemer did not contact M.B. at any time to determine her willingness to accept J.S. Nor did Redeemer visit M.B.'s apartment.⁸

9. J.S. has a married daughter who lives in Zimmerman, Minnesota, but they are not on good terms and the daughter would not accept J.S. into her home. She also has a brother, Tom, who lives in Prescott, Arizona, a sister Jean, who lives in Billings, Montana, and another brother Stan, residence unknown. There is no evidence of a significant relationship with these siblings.⁹

10. Redeemer has assigned a licensed social worker to J.S.'s case and the social worker has contacted many resident homes as part of the discharge planning. The planning began as early as January 2012.¹⁰ However, most of the discharge planning did not occur until after the notice of discharge was served on April 27, 2012.¹¹ Some of the homes had no openings. Others would not accept J.S. because of her payment history. Discharge planning is ongoing. J.S. has certain places in mind that she would prefer to go. Schmidt's attending physician agrees that J.S. can be safely transferred to housing with home care services. The social worker is finding it difficult to find a place that will accept J.S. because of J.S.'s refusal to assign her social security benefits, because of behavioral issues and because J.S. has identified one place that she would prefer to go (Catholic Eldercare in Northeast, Minneapolis) and thus has not

⁶ See CFR 483.12 and sections 1819(c)(2) and 1919(c)(2) of the Social Security Act.

⁷ Test. of Dan Colgan and Ex. 2.

⁸ Test J.S.

⁹ Test J.S.

¹⁰ Ex 8.

¹¹ Ex 7.

cooperated with other possible placements. J.S. was discharged from a prior facility and that is also proving to be an obstacle to placement. J.S. prefers to go to the Catholic Eldercare facility, but they have a lengthy waiting list. J.S. refused to attend a placement interview at Augustana Apartments in January 2012.¹² J.S. has stated on many occasions that she wants to get out of the Redeemer facility. She has also stated that she is willing to consider placement at other facilities while she waits for an opening at Catholic Eldercare, but her continued insistence on not applying any of her personal funds to the cost of her care is an obstacle to placement.¹³

11. J.S. has repeatedly expressed dislike of the conditions at Redeemer, and does not want to stay there.

CONCLUSIONS

1. The Department of Health and the Administrative Law Judge have jurisdiction in this matter under Minnesota Law.

2. Redeemer gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule, except that it has not identified a suitable location for transfer. The apartment identified in the notice is not suitable because J.S. would not be accepted there.

3. A skilled nursing facility, such as Redeemer Health and Rehab Center, may discharge or transfer a resident, for failure to pay, after reasonable and appropriate notice, for a stay at the facility.

4. Notice of nonpayment was provided and J.S. has refused to pay. Even if J.S. could not pay all the arrears at once, she would continue to refuse the use of any of her Social Security income to pay any of the ongoing charges because she wants those funds for her personal use. J.S. has not been prejudiced by the fact that the notice of amounts remaining due was not provided until early April 2012: She would have refused to pay anyway.

5. J.S. does not have a right to stay at Redeemer until a space opens at Catholic Eldercare, if a suitable placement can be made sooner elsewhere.

6. The discharge of J.S. at this time should be denied because to do otherwise would deprive her of the statutory right to meaningfully contest the location of her discharge.

¹² Augustana had a one bedroom apartment available, but the cost would have almost exhausted all of J.S.'s social security benefits. If an efficiency had become available it would be somewhat less expensive, but would still require payout from J.S.'s benefits.

¹³ Test of J.S. and Rachel Gilmore and Exs. 4 and 8.

RECOMMENDATION

It is respectfully recommended that the Commissioner of Health GRANT the Petitioner's appeal and deny the proposed discharge until such time as the facility has adequately planned for a safe and orderly discharge.

Dated: July 3, 2012

s/Thomas W. Wexler

THOMAS W. WEXLER
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Dr. Edward Ehlinger, Commissioner, Department of Health, 625 Robert St. N, PO Box 64975, St. Paul, MN 55164-0975, (651) 201-5810 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

J.S. received a letter from Legal Aid which was admitted as Exhibit 11. It presents some legal argument on J.S.'s behalf which appears to raise a legitimate issue about the suitability of the location referenced in the discharge notice. J.S. was otherwise unrepresented in this proceeding.

Redeemer argues that it was not necessary for it to confirm the availability of M.B.'s apartment, so long as it was a suitable place for J.S. (if available) and so long as they were continuing to actively work with J.S. to find a suitable discharge location. The problem with this argument is that it would render the requirement to identify a suitable discharge location meaningless and would deprive the resident of a meaningful opportunity to address the suitability of the transfer location.

Other cases have addressed similar factual situations. In one case the named discharge location was not good, but a suitable place was identified by the time of the hearing. In that case the discharge was approved.¹⁴ But here there still is no identified location that committed to accept J.S. In large part the lack of an identified location is J.S.'s fault because she has not cooperated with the process, and has refused to assign her social security benefits.

In another case, where there was an inadequate plan for safe and orderly transfer, the place identified was a homeless shelter.¹⁵ In that case the facility failed to contact the shelter to determine if there was room for the resident or to determine if they would be able to assist with medications. In that case discharge was denied until such time as the facility has adequately planned for a safe and orderly discharge.

J.S. could be discharged to a variety of home situations, so long as health care services are provided there or so long as home health care can access the location to assist with her care. These could include an apartment or an assisted living facility or possibly even a nursing home. However, until a suitable facility is identified, has an opening, and indicates a willingness to accept J.S., there is no opportunity for J.S. to appeal whether the location is indeed suitable.

There are good reasons why J.S. ought not to be permitted to create this difficult situation for Redeemer. She has made placement difficult by refusing to use her Social Security to meet payment obligations at locations where she might be placed. She has exhibited behavior problems so that other places will not accept her. And she has refused to cooperate with placement at a location that might have accepted her. All of this puts Redeemer in a difficult placement situation. However, the alternative is to approve the discharge to a place unknown, which is prohibited by law. The law and regulations most reasonably require a more substantial effort to identify a suitable location, before serving the notice of discharge, than occurred here. Here, Redeemer made no effort to determine if the identified discharge location was available or suitable, until after the discharge notice was served.

T. W. W.

¹⁴ M.W. and Nile Health Center, OAH #11-0900-15230-2.

¹⁵ R.M. and Golden Living Center, OAH # 3-0900-21633-2.